

Article 6: Board and Commissions

Division 7: Commission for Arts and Culture

*(“Commission for Arts and Culture”
added 5-15-1989 by O-17298 N.S.)*

§26.0701 Purpose and Intent

It is the purpose and intent of the City Council to establish a Commission for Arts and Culture to serve in an advisory capacity to the Mayor, City Council and City Manager on promoting, encouraging, and increasing support for arts and culture.

It is also the purpose and intent of the City Council to encourage the preservation and augmentation of the City of San Diego’s cultural and artistic resources, and to ensure that the City’s increasing urbanization is offset by the creation of *artworks* and venues dedicated to artistic performances, exhibitions, and cultural events.

(Amended 4-20-1992, by O-17757 N.S.)

(Amended 5-17-2004, by O-19280 N.S.)

§26.0702 Definitions

Except as otherwise provided, for the purposes of this division:

Applicant has the same meaning as stated in Land Development Code section 113.0103.

Artist means an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner’s body of work, educational background, experience, *public performances*, past public commissions, exhibition record, publications, and production of *artwork*.

Artwork includes:

Sculpture: may be made of any material or combination of materials; may be free standing, wall-supported or suspended, kinetic, electronic or mechanical.
Murals or paintings: may be made of any material or variety of materials with or without collage; may be made with traditional or non-traditional materials and means.

Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), mosaics, photographs, prints, literary expression, calligraphy, any combination of forms of media, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies, or new genres.

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Artwork as defined herein may be permanent, fixed, temporary or portable, may be an integral part of a building, facility, or structure, and may be integrated with the work of other design professionals.

Capital Improvements Program project means any permanent public improvement project paid for wholly by monies appropriated by the City to construct, improve, or renovate a building, including its appurtenant facilities, a decorative or commemorative structure, a park, a sidewalk, a parking facility, a utility, or any portion thereof, within the City limits or under the jurisdiction of the City.

Commission means the City of San Diego Commission for Arts and Culture.

Cultural use includes individual and group presentations, exhibitions, or *public performances* involving music, dance, theatre, opera, literature, sculpture, murals, paintings, earthworks, mosaics, photographs, prints, calligraphy, or any combination of media currently known or which may come to be known, including audio, video, film, CD-ROM, DVD, holographic or computer generated technologies.

Development has the same meaning as stated in Land Development Code section 113.0103.

Open and freely accessible, means available for use by the general public during normal hours of business operation consistent with the operation and use of the *premises*.

Premises has the same meaning as stated in Land Development Code section 13.0103.

Public art means *artwork* that is created using funds from the *public art fund* and is located in *public places*.

Public art fund means a separate fund established in the City Treasury into which funds allocated in accordance with Chapter 2, Article 6, Division 7 shall be deposited.

Public art program includes all responsibilities and activities of the *Commission* in accordance with Chapter 2, Article 6, Division 7 pertaining to *public art*.

Public art program allocation means the percentage of the *total building permit valuation* for a qualifying development in accordance with Chapter 2, Article 6, Division 7 which is set aside for the City's *public art program*.

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Public performances includes individual and group presentations of music, dance, theatre, opera, literary, film/video and other forms of art generally recognized.

Public places means land and buildings owned by the City of San Diego.

Total building permit valuation means the combined total valuation of all new structures, including tenant improvements within those new structures, within the *premises*, using the latest building valuation data as set forth by the International Code Council [ICC] and utilized by the City of San Diego Building Official in determining valuation.

(Amended 4-10-2000, by O-18786 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

§26.0703 Commission for Arts and Culture Established

There is hereby established a Commission for Arts and Culture consisting of fifteen members. *Commission* members shall be persons who represent the following: individual *artists*, arts and culture patrons, educators, the business community, those with professional qualifications and experience or knowledge of a particular arts and culture field, and the general public.

The members shall serve two year staggered terms for a maximum of eight consecutive years, and each member shall serve until a successor is duly appointed and confirmed. An interval of four years must pass before such persons may be reappointed. The members shall be appointed by the Mayor and confirmed by the City Council, subject to the following conditions: 1) The Mayor shall appoint seven members; and, 2) the Mayor shall appoint the remaining eight members, one each from a list of three nominations submitted by each Councilmember. The expiration date of all terms shall be August 31. During September of each year, the Mayor may designate one member as chairperson; however, in the absence of such designation, the *Commission* shall on or after October 15 select from their members a chairperson. The *Commission* shall meet not less than monthly and report to the Mayor and Council on an as needed basis, but not less than one time per year.

The *Commission* shall adopt rules consistent with laws for the government of its business and procedures.

(Amended 4-20-1992, by O-17757 N.S.)

(Renumbered 5-17-2004, by O-19280 N.S.)

§26.0704 Duties and Functions

The *Commission* shall:

- (a) Strongly advocate a substantial increase in funds for arts and culture.

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- (b) Make all funding recommendations directly to the Mayor, City Council and City Manager.
- (c) Explore new sources of funding for arts and culture and evaluate the current allocation of Transient Occupancy Tax funding as it pertains to arts and culture.
- (d) Develop, coordinate and regularly reevaluate the City's arts and culture policies.
- (e) Consistent with City Council policy, serve as advocates for arts and culture with the City Council, as well as the private sector, local, regional, state and federal governments, and international entities, such as Mexico, Canada, Japan and Pacific Rim countries.
- (f) Serve as the State/Federal local arts program partner.
- (g) Manage the City's *public art program*, which shall include the following:
 - (1) Advising on the acquisition, placement and maintenance of *public art* on property of the City of San Diego. No *public art* shall be installed or existing work of *public art* removed from *public places* without a review by the *Commission*.
 - (2) Developing and recommending to the Mayor, City Council and City Manager as appropriate:
 - (A) Programs to promote *public performances* and the public exhibition of the visual, performing, and literary arts.
 - (B) Legislation to provide opportunities for inclusion of the visual, performing, and literary arts in private *development*.
 - (C) Legislation and policies to include *public art* in selected *Capital Improvements Program projects*.
- (h) Receive and accept applications for Transient Occupancy Tax funding, and using objective criteria evaluate the applications and recommend to the Mayor, City Council, and City Manager the allocation of that funding.
- (i) Recommend for the City Manager's review a budget for funding arts and culture programs in the City.
- (j) Establish guidelines to carry out the *public art program* which shall include methods of selecting *artists* or *public art* and for the placement of *public art*.

- (k) Advise the City Council regarding the possible purchase of *public art* or commissioning the design, execution or placement of *public art*. The *Commission* shall work with the City Manager regarding the design, execution or placement of *public art* in connection with *Capital Improvements Program projects*.
 - (l) In the placement of *public art* in the City, give special attention to the placement of appropriate *public art* in City neighborhoods.
 - (m) Receive input from the City Manager regarding operation and maintenance expenses associated with a work of *public art*. If the City Manager finds that a proposed work of *public art* requires extraordinary operation or maintenance expenses, the *Commission* shall recommend another work of *public art*, or submit with its recommendation to the City Manager and City Council a statement of overriding consideration of why the *public art* should be utilized notwithstanding its extraordinary operation or maintenance expense.
 - (n) In cooperation with the City Manager, establish and adopt policies and procedures to implement the requirements of Chapter 2, Article 6, Division 7.
 - (o) Where a work of *public art* is to be included in the construction of a *Capital Improvements Program project*, facilitate cooperation and early project coordination between City staff and *artists*.
- (Renumbered 5-17-2004, by O-19280 N.S.)

§26.0705 Exemptions

The requirements of Chapter 2, Article 6, Division 7 do not apply to the following:

- (a) Industrial and commercial *development* with a *total building permit valuation* of less than \$5,000,000.
- (b) Any *premises* which has an institutional use, such as churches, hospitals, and schools.
- (c) Any *premises* which is used solely for residential *development*.
- (d) Any *premises* which is owned or leased solely by a non-profit entity and used in furtherance of the owner's or lessee's non-profit purpose.
- (e) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to national security reasons.

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- (f) Industrial and commercial *development* that is not open or accessible, in its entirety, to the general public due to the storage and use of hazardous, radiological, or infectious materials that may jeopardize the public's safety.

(Amended 4-20-1992, by O-17757 N.S.)

(Renumbered to Sec. 26.0702 and added as new section on 5-17-2004, by O-19280 N.S.)

§26.0706 General Public Art Program Allocation Regulations

- (a) Subject to the provisions of Section 26.0708, no final City approval to occupy any private industrial or commercial *development*, or any portion thereof, with a total *building permit valuation* greater than or equal to \$5,000,000 (revised annually by the percentage increase or decrease in the Los Angeles/San Diego Construction Cost Index as reported and published by the Engineering News Record or its successor for the twelve-month period ending January 1 of each year) may be granted unless an amount equal to one percent of its *total building permit valuation* has been set aside by the *applicant* as a *public art program allocation*.

- (1) For phased *development*, calculation of *total building permit valuation* will be based on the total number of building permits applied for, but not yet issued, for the *premises*, but does not include any withdrawn permit applications.
- (2) The valuation of any exempt component of a mixed use *development* shall be deducted from the combined total valuation.
- (3) The calculation of total valuation shall not include that portion of new tenant improvements that exceed \$150 per square foot and is an occupancy classification required under the California Building Code to be a Type I fire rated occupancy classification.

- (b) *The public art program allocation* may be used by the *applicant* to comply with the requirements of Chapter 2, Article 6, Division 7 through one of the following means:

- (c) Placement of *artwork* on the *premises*. If the value of the *artwork*, including its design, fabrication, and installation costs is not equal to or greater than the *public art program allocation*, the *applicant* shall pay an in lieu fee equal to the difference between the amount of the *public art* program allocation and the value of the artwork.

Maintaining a portion of the *premises open and freely accessible* for a *cultural use*. If the value of that portion of the *premises* which is *open and freely accessible* for a *cultural use* is not equal to or greater than the *public art*

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program allocation, the *applicant* shall pay an in lieu fee equal to the difference between the amount of the *public art program allocation* and the value of the *premises* which is *open and freely accessible* for a *cultural use*.

- (d) Payment of an in-lieu fee equal to one-half of one percent of the *total building permit valuation* for the *development*.
(Amended 4-20-1992, by O-17757 N.S.)
(Renumbered 5-17-2004, by O-19280 N.S.)

§26.0707 Public Art Program Allocation Procedures

Upon application for a building permit, the *applicant* shall be informed of the *public art program allocation* requirements and referred to the *Commission* in order to:

- (a) Declare in writing the means by which the *applicant* will comply with the requirements of Section 26.0706; and
- (b) Where applicable, enter into a Declaration of Covenants, Conditions, and Restrictions in accordance with Section 26.0709.
(Amended 4-20-1992; by O-17757 N.S.)
(Renumbered 5-17-2007; by O-19280 N.S.)

§26.0708 General Rules for Public Art Program Allocation Regulations

- (a) If the *applicant* pays an in-lieu fee in accordance with the provisions of Section 26.0706(e), no building permit for the *development* may be issued without payment of the in lieu fee to the City of San Diego.
- (b) If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and freely accessible* for a *cultural use* in accordance with the requirements of Section 26.0706(c) or (d), no building permit for the *development* may be issued until the *applicant* deposits with the City security either in the form of a surety bond issued by a surety company authorized to do business in the State of California, or in cash, or the equivalent amount in other security approved by the City Manager and City Attorney in an amount equal to one-half of one percent of the *total building permit valuation*.
- (c) Prior to issuance of the Certificate of Occupancy for the *development*, the *applicant* shall submit evidence, satisfactory to the Executive Director of the *Commission*, that:
 - (1) If applicable, the value of the *artwork* installed on the *premises* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include the costs of *artist* design fees, fabrication of the *artwork*, and installation of the *artwork*.

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- (2) If applicable, the value of the portion of the *premises* which is maintained *open and freely accessible* for a *cultural use* is equal to or greater than one percent of the *total building permit valuation* for the *development*. Such evidence may include data establishing the proportional value of the total square footage and all tenant improvements for the *development*.

(Added 5-17-2004; by O-19280 N.S.)

§26.0709 Declaration of Covenants, Conditions, and Restrictions

If the *applicant* installs an *artwork* on the *premises* or maintains a portion of the *premises open and freely accessible* for a *cultural use* in accordance with the requirements of Section 26.0706(c) or (d), the *development* shall have recorded against it a Declaration of Covenants, Conditions, and Restrictions in favor of the City and in a form approved by the City Attorney which shall include the following provisions as appropriate:

- (a) The owner of the *development* shall provide all necessary maintenance of the *artwork*, including preservation of the *artwork* in good condition to the reasonable satisfaction of the City and protection of the *artwork* against destruction, distortion, mutilation, or other modification. The owner of the *premises* may retain ten percent of the *public art program allocation* in order to fund the costs of ongoing repair, conservation, maintenance, insurance, and security of the *artwork*, as necessary to comply with the requirements of Chapter 2, Article 6, Division 7.
- (b) The owner of the *development* shall ensure that the *artwork* will be located in an area that is *open and freely accessible*.
- (c) A description of that portion of the *premises* which will be maintained *open and freely accessible* and its designated *cultural use*.
- (d) Any other reasonable terms necessary to implement the provisions of Chapter 2, Article 6, Division 7.

(Added 5-17-2004, by O-19280 N.S.)

§26.0710 Return of Fees

- (a) Fees paid to the City of San Diego which are unexpended within five years from the date of payment may be returned to the then current owner(s) of the *development*, with all interest actually earned thereon, if a written request for return is filed with the City Treasurer during the fifth year after payment, and refund of the fees is approved by the City Council. The request for return shall be verified, and include the date of payment, the amount paid and

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method of payment, the location of the *development* for which the fee was paid, and a statement that the person making the request is the fee payer or the current owner of the *development*.

- (b) The City Council shall determine if return of the then unexpended portion of the fees and interest is appropriate and, if so, the method of refund. No refund shall be appropriate if the City Council determines any one of the following conditions applies:
- (1) The City Council finds that the fee is needed for the *public art program*.
 - (2) Funds were not posted as fees, but were satisfied by letter of credit, bond or other instrument taken to secure payment at a future date.
 - (3) The administrative cost of refunding unexpended fees in accordance with the requirements of Section 26.0710(a) exceeds the amount to be refunded, provided notice of a public hearing on this issue has been published and posted on the site of the *development* in not less than three places.

(Added 5-17-2004, by O-19280 N.S.)

§26.0711 Failure to Maintain Artwork

Failure to maintain *artwork* in accordance with Chapter 2, Article 6, Division 7 is declared to be a public nuisance.

(Added 5-17-2004, by O-19280 N.S.)

§26.0712 Appeal

Any *applicant* may seek review of a decision by the *Commission* under Section 26.0708(c) of Chapter 2, Article 6, Division 7 by filing an application for an appeal hearing with the Executive Director of the *Commission* no later than ten business days after the *Commission*'s decision.

The Executive Director of the *Commission* shall coordinate a date for an appeal hearing before the City Manager or his designee no later than ten business days after the date on which an application for the appeal hearing is filed with the *Commission*. The appeal hearing shall generally be held within sixty business days following the filing of the application for the hearing. The certificate of occupancy may be withheld pending resolution of the appeal.

At the conclusion of the appeal hearing, the City Manager or his designee may affirm, reverse, or modify the *Commission*'s decision. The decision of the City Manager is final.

(Added 5-17-2004, by O-19280 N.S.)

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